

# Order

Entered: March 28, 2002

2002-04

Proposed Addition of Subchapter 2.700 and  
Amendment of Various Other Provisions  
of the Michigan Court Rules

Proposed Amendment of Various Provisions  
of the Michigan Rules of Evidence

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## Michigan Supreme Court Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

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Justices

On order of the Court, this is to advise that the Court is considering the addition of subchapter 2.700 to the Michigan Court Rules to govern proceedings in the Cyber Court that was established by 2001 PA 262; MCL 600.8001 *et seq.* The proposed new subchapter and the proposed amendments of numerous existing court rules and evidentiary rules were developed by a work group convened by the State Bar. In performing its task, the group reviewed the Uniform Electronic Transactions Act, MCL 450.830 *et seq.*, as well as the Guidebook for Electronic Court Filing that was compiled for the staff of the National Center for State Courts. The group also studied the experiences of the business courts in North Carolina and Delaware, and those federal and state courts that utilize electronic filing.

The work group established the following guidelines for its proposal:

- Electronic processes and procedures should be compatible with traditional processes and procedures.
- The processes and procedures of the Cyber Court should serve as a forerunner of technological innovation and access throughout Michigan's court system.
- The same degree of integrity and authenticity now available in the traditional provision of documents, evidence, and attorney accountability should be assured for practice in the Cyber Court.

Before determining whether the State Bar's proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposal or to suggest alternatives. Before adoption or rejection, the proposal will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The following new language would be added.]

## **SUBCHAPTER 2.700**

### **Electronic Practice**

#### **Rule 2.701 Applicability**

Procedure in the Cyber Court and in courts certified by the state court administrator as cyber-qualified under AO 1997-8 is governed by the rules applicable to other civil proceedings, except as otherwise provided by the rules in this subchapter.

#### **Rule 2.702 Construction**

The rules in this subchapter are to be construed broadly in light of developing technology to promote the most efficient, convenient, and cost-effective resolution of disputes that is consistent with the laws of this state and these rules, using the technological resources available to the court and the parties at the time the rules are applied.

#### **Rule 2.703 Definitions**

The following definitions apply in the Cyber Court and in cyber-qualified courts:

##### **(A) General Definitions.**

- (1) “Court” means the Cyber Court or a cyber-qualified court.
- (2) “Cyber-qualified court” means a court, or a division of a court, that is certified by the state court administrator under AO 1997-8.
- (3) “Document” means a related and paginated grouping of information that is contained in a record, including an electronic record.
- (4) “Electronic” means relating to technology and having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (5) “Posting” or “publication” means the announcement in a public medium, including a website, of information for the purpose of service of process.

##### **(B) Electronic Filing Definitions.**

- (1) “Attached” means, for electronic filings and submissions, that a paper or electronic record is included in the filing and submission in the same medium as the primary filing or submission and is accessible in the same way.

- (2) “Attachment” means, for electronic filings and submissions, a paper or electronic record that is included in a filing or submission in the same medium as the primary filing or submission, and that is accessible in the same way.
- (3) “Authorized electronic filer” means a person who is authorized by the clerk of the Cyber Court or a cyber-qualified court to file documents electronically.
- (4) “Certification authority” means an entity appointed by the Supreme Court to issue and revoke digital key-bit sequences that are used to affix a digital signature to an electronic document.
- (5) “Digital signature” means a signature that is created by the use of public key-encryption technology.
- (6) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means. All electronic records must be capable of being printed on paper, or of being transferred to archival media, without loss of content or material alteration of appearance.
- (7) “Electronic security procedure” means a procedure used to verify that an electronic signature, record, or performance is that of a specific person, or for detecting changes or errors in the information in an electronic record.
- (8) “Electronic transmission” means the filing or submission by an authorized electronic user to a court or another authorized electronic filer of an electronic record containing information which, when received, can be transformed and stored or reproduced on paper, microfilm, magnetic-storage device, optical- imaging system, or other authorized electronic recordkeeping system.
- (9) “Original” means a writing, recording, or other record, or any counterpart intended by the person executing or issuing it to have the same effect. “Original” includes a printout or other perceivable output of a record of data or images stored in a computer or similar device, if shown to reflect the data or images accurately.
- (10) “Papers” means pleadings or other documents, and includes documents filed electronically.
- (11) “Record” means information that is inscribed on a tangible medium, stored in an electronic or other medium, and retrievable in perceivable form.
- (12) “Signature” means the symbol executed or adopted by a person with the intent to sign a record.
- (13) “Writing” means letters, words, numbers, or their equivalent, that are placed by typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(14) “Written” means the quality of being communicated in writing.

(C) Electronic Appearance Definitions.

(1) “Attend” or “be present” means to be physically at a proceeding conducted in one location, or to be at more than one location simultaneously through the use of two-way interactive video technology.

(2) “Opportunity to be heard” means the ability to have an argument or motion considered by the court, and includes consideration by electronic means.

**Rule 2.704 Certified Copies and Sworn Statements in Electronic Form**

Documents containing notarization, sworn statements, and signatures of persons may be filed with the court electronically in scanned form. The original must be retained by the authorized electronic filer and produced upon demand of the court.

**Rule 2.705 Electronic Appearance and Attendance**

Upon approval of the court, a party or a witness in a proceeding, including discovery and pretrial procedures, may appear through the use of two-way, interactive-video technology, videoconference technology, or Internet broadcast technology.

**Rule 2.706 Electronic Motion Practice**

A copy of a motion or a response (including a brief and any affidavits) must be provided by counsel to the office of the judge hearing the motion in the manner required by the court.

**Rule 2.707 Filing of Electronic Deposition**

A deposition recorded by electronic means may be filed electronically upon approval of the court.

**Rule 2.708 Proof of Electronic Service**

Proof of service on an authorized electronic filer by another authorized electronic filer may be made by electronic confirmation of the receipt of the summons if the service is made to the recipient’s registered e-mail or facsimile address. The confirmation may be an acknowledgment by the recipient, including the date, time, and manner of receipt; an affidavit of the person making the service; a statement verified under MCR 2.114(B); or other proof approved by the court.

**Rule 2.709 Service by E-mail or Facsimile Mail**

The clerk of the court and authorized electronic filers may serve notice and other papers on other authorized electronic filers by electronic transmission.

**Rule 2.710 Organization and Operation of the Cyber Court**

(A) Chief Judge and Chief Judge Pro Tempore.

(1) The Supreme Court shall appoint the chief judge of the Cyber Court, who shall serve at the pleasure of the Court.

- (2) The chief judge shall select a chief judge pro tempore, who shall serve at the pleasure of the chief judge and shall fulfill such functions as the chief judge assigns.
  - (3) The chief judge and chief judge pro tempore shall each serve a three-year term beginning January 1.
- (B) Location of the Cyber Court. The Cyber Court clerk, staff, and support services are located in Lansing.
- (C) Hours of Operation. The regular hours of the court are 8:30 a.m. to 5:00 p.m. EST. However, the court is open at all hours for filing purposes, and hearings may be held at any time. Hearings shall be scheduled by the judge to whom a case is assigned at the time the judge determines to be most convenient to the parties, consistent with the demands of justice.
- (D) Cyber Court Clerk.
  - (1) The Supreme Court shall appoint a clerk who possesses the technological experience and capability required to maintain an electronic filing and docketing system.
  - (2) The duties of the clerk of the Cyber Court are:
    - (a) to operate a filing system that
      - (i) meets or exceeds the standards of security, authenticity, accuracy, and accessibility of traditional filing systems;
      - (ii) complies with MCR 8.119;
      - (iii) retains electronic records in the format in which they are submitted, and preserves them in a format that can be archived in accordance with specifications set by the National Archives and Records Administration; and
      - (iv) when directed by the court, permits the filing of nonelectronic documents or exhibits that are submitted in connection with the case;
    - (b) to register persons who meet the requirements of MCR 2.711(A) as authorized electronic filers; and
    - (c) to chair a user group consisting of regular practitioners in the Cyber Court, which shall be convened regularly to provide commentary and suggestions on improving the operation of the court, with particular emphasis on efficiency and convenience.

**Rule 2.711 Filing in the Cyber Court**

- (A) Authorization as Electronic Filer. The electronic transmission of documents may be made

only by authorized electronic filers. The clerk of the court must register a person as an authorized electronic filer if the person signs an authorized filer agreement that commits the person to

- (1) comply with all electronic security procedures of the court, including the use of a digital signature issued by a certification authority;
  - (2) maintain with the court a current e-mail address for the receipt of information from the court and other authorized electronic filers;
  - (3) pay applicable service fees; and
  - (4) attest that the person has not had a previous authorization as an electronic filer revoked for any reason, including the failure to comply with the authorized filer agreement.
- (B) **Time of Filing.** A document is filed when it is sent by an authorized electronic filer and enters the information-processing system of the court in a form capable of being processed by that system, except that a filing that requires the payment of a fee is not complete until the fee is paid. An electronic document may be sent to the court at any time.
- (C) **Transmission Difficulties.** An authorized electronic filer who attempts to file a document by electronic transmission is responsible for any delay, disruption, or interruption of electronic signals and for readability of the document. The filer accepts the full risk that the document may not be properly filed.
- (D) **Notice of Filing.** Upon the electronic filing of a document, the court will send a confirmation of the filing to the e-mail address of the authorized electronic filer. An authorized electronic filer who has attempted to file a document and who does not receive an e-mail confirmation is responsible for contacting the clerk of the court to determine the status of the filing and for resending the document, if necessary.
- (E) **Fees.** Fees and any other money owed to the court must be paid electronically, by any of the following means:
- (1) electronic transfer of funds;
  - (2) credit card authorized by the court;
  - (3) debit card authorized by the court; or
  - (4) any other electronic method approved by the clerk of the court.

#### **Rule 2.712 Removal or Transfer of Action**

- (A) The court shall remove an action to the circuit court in which venue is proper if

- (1) the defendant files a motion to remove within 14 days after the deadline for filing an answer to the complaint; or
  - (2) an applicant under MCR 2.209(A) has the right to intervene in the action and the applicant's motion for removal is timely filed or the court on its own motion determines that the applicant's interest cannot be adequately protected through electronic practice.
- (B) When an action is removed to circuit court, in whole or in part, after the plaintiff pays the fees and costs, the clerk of the court shall notify the parties that they must refile their papers in the court to which the action has been transferred.

### **Rule 2.713 Cyber Court Hearings**

- (A) **Place of Hearing.** The court shall sit in any location designated by the chief judge as technologically qualified. The court may sit in more than one location for a single hearing. The location in which the judge is physically present shall be designated as the primary location, and is the location of record for the hearing. Any other location for the hearing shall be recorded as a satellite location.
- (B) **Public Access to Cyber Court Hearings.** Subject to MCR 2.302(C), Cyber Court hearings are open to the public by any of the following means:
- (1) physical access to the courtroom of the primary location or satellite location of the hearing;
  - (2) access to a live closed circuit television broadcast at the primary location or satellite location of the hearing; and
  - (3) live webcast of the hearing; to the extent possible, every hearing must be webcast live.
- (C) **Public Notice of Hearings.** Except for emergency hearings, public notice of all hearings must be posted on the Cyber Court website at least 24 hours in advance of the hearing, with instructions on how to obtain public access. In the case of an emergency hearing, notice must be posted as soon as practicable, but no later than the start of the hearing.

### **Rule 2.714 Cyber Court Website**

- (A) The clerk of the Cyber Court must maintain a fully scalable website with technical specifications that meet or exceed national and international standards, and with a link to the Supreme Court's website.
- (B) The following information must be accessible to the public directly on the Cyber Court website, and be kept current:

- (1) the jurisdiction of the Cyber Court;
  - (2) the name of the clerk of the Cyber Court and how to contact the clerk electronically;
  - (3) the names of the chief judge and judges of the Cyber Court;
  - (4) the docket of the Cyber Court, including a prominent notification in connection with any docket item in which the court has ordered or has pending before it a request to limit public access; when such notification is required, it must include information pursuant to MCR 8.116(D) on how to file a motion to set aside the order or an objection to entry of the proposed order;
  - (5) instructions on how to become an authorized electronic filer, and a copy of the Authorized Electronic Filer Agreement;
  - (6) instructions on how to access documents filed with the court;
  - (7) a menu of available alternative dispute resolution techniques; and
  - (8) a list of cyber-qualified courts.
- (C) The following information must be available to the public on the Cyber Court website, but may be provided through a link to another website:
- (1) statutory provisions concerning the Cyber Court; and
  - (2) subchapter 2.700 of the Michigan Court Rules.
- (D) The following information must be accessible to all authorized electronic filers:
- (1) detailed instructions concerning technical specifications for electronic practice in the Cyber Court;
  - (2) information concerning the Authorized Electronic Filer User Group, including a directory of authorized electronic filers and their e-mail addresses;
  - (3) how to apply for membership in the Authorized Electronic Filer User Group;
  - (4) the schedule of user group meetings;
  - (5) minutes of user group meetings; and
  - (6) a list of members of the Authorized Electronic Filer User Group and how to contact them.



### **Rule 2.715 Alternative Dispute Resolution in the Cyber Court**

The Cyber Court shall adopt an Alternative Dispute Resolution Plan pursuant to MCR 2.410(B) that offers a menu of alternative dispute services customized for commercial and business disputes within the jurisdiction of the court. If all parties in a case choose an alternative dispute resolution option, the service shall be made available as quickly as practicable, and the electronic filing and virtual courtroom facilities of the Cyber Court shall be fully available for the service. In addition, judges of the Cyber Court shall provide assistance to parties who wish to develop customized alternative dispute resolution services through the resources of the Cyber Court.

[The following existing provisions of the Michigan Court Rules  
would be amended, as indicated below.]

### **Rule 1.109 Letter-Size Paper Standard**

Other than electronic documents filed in accordance with subchapter 2.700, All pleadings and other papers prepared for filing in the courts of this state must be on good quality paper not exceeding 8½ inches wide by 11 inches long. An electronically filed pleading or other paper prepared for filing must be formatted in a page layout with portrait orientation for paper 8½ by 11 inches, if practical. This requirement does not apply to attachments and exhibits, but parties are encouraged to reduce or enlarge such papers to 8½ by 11 inches, if practical. Court clerks may not accept nonconforming papers except on written direction of a judge.

### **Rule 2.104 Process; Proof of Service**

(A) Requirements. Except as provided in MCR 2.708, Pproof of service may be made by

(1)-(3) [Unchanged.]

The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location.

(B)-(C) [Unchanged.]

(D) Electronic Proof of Service. Proof of service in the Cyber Court or a cyber-qualified court is governed by MCR 2.708.

### **Rule 2.105 Process; Manner of Service**

(A) Individuals. Process may be served on a resident or nonresident individual by

- (1) delivering a summons and a copy of the complaint to the defendant personally; ~~or~~
- (2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the

defendant must be attached to proof showing service under subrule (A)(2), or:

(3) serving notice by e-mail or facsimile mail as provided by MCR 2.709.

(B) Individuals; Substituted Service. Service of process may be made

(1) on a nonresident individual, by

(a) [Unchanged.]

(b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address or by e-mail or facsimile mail as provided in MCR 2.709;

(2)-(3) [Unchanged.]

(4) on an individual doing business under an assumed name, by

(a) [Unchanged.]

(b) sending a summons and a copy of the complaint by registered mail addressed to the individual at his or her usual residence or last known address or by e-mail or facsimile mail as provided in MCR 2.709.

(C) Partnerships; Limited Partnerships. Service of process on a partnership or limited partnership may be made by

(1) [Unchanged.]

(2) serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner at his or her usual residence or last known address or by e-mail or facsimile mail as provided in MCR 2.709.

(D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by

(1) [Unchanged.]

(2) serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation or by e-mail or facsimile mail as provided in MCR 2.709;

(3)-(4) [Unchanged.]

- (E) Partnership Associations; Unincorporated Voluntary Associations. Service of process on a partnership association or an unincorporated voluntary association may be made by
- (1) [Unchanged.]
  - (2) sending a summons and a copy of the complaint by registered mail, addressed to an office of the association or by e-mail or facsimile mail as provided in MCR 2.709. If an office cannot be located, a summons and a copy of the complaint may be sent by registered mail or by e-mail or facsimile mail as provided in MCR 2.709 to a member of the association other than the person on whom the summons and complaint was served.
- (F) Service on Insurer. If service on an insurer is made by serving the Commissioner of Insurance, as permitted by statute, 2 summonses and a copy of the complaint must be delivered or mailed by registered mail or by e-mail or facsimile mail as provided in MCR 2.709 to the office of the Commissioner of Insurance.
- (G) Public Corporations. Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or public body may be made by serving a summons and a copy of the complaint on:
- (1)-(8) [Unchanged.]

The service of process may be made on an officer having substantially the same duties as those named or described above, irrespective of title. In any case, service may be made by serving a summons and a copy of the complaint on a person in charge of the office of an officer on whom service may be made and sending a summons and a copy of the complaint by registered mail addressed to the officer at his or her office or by e-mail or facsimile mail as provided in MCR 2.709.

- (H) Agent Authorized by Appointment or by Law.

- (1) [Unchanged.]
- (2) Whenever, pursuant to statute or court rule, service of process is to be made on a nongovernmental defendant by service on a public officer, service on the public officer may be made by registered mail addressed to his or her office or by e-mail or facsimile mail as provided in MCR 2.709.

- (I) - (K) [Unchanged.]

## **Rule 2.107 Service and Filing of Pleadings and Other Papers**

- (A) [Unchanged.]

- (B) Service on Attorney or Party.

- (1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:
- (a) The original service of the summons and complaint must be made on the party as provided by MCR 2.105 or subchapter 2.700;
- (b)-(d) [Unchanged.]
- (2)-(3) [Unchanged.]
- (C) Manner of Service. Except as provided in subchapter 2.700, Sservice of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.
- (1)-(3) [Unchanged.]
- (D) Proof of Service. Except as otherwise provided by MCR 2.104, 2.105, ~~or 2.106~~, or 2.708, proof of service of papers required or permitted to be served may be by written acknowledgment of service, affidavit of the person making the service, a statement regarding the service verified under MCR 2.114(A), or other proof satisfactory to the court. The proof of service may be included at the end of the paper as filed. Proof of service must be filed promptly and at least at or before a hearing to which the paper relates.
- (E) Service Prescribed by Court. When service of papers after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made. In the court's discretion, the manner of service may be electronic, including web posting.
- (F) [Unchanged.]
- (G) Filing With Court Defined. Except for filing subject to subchapter 2.700, Tthe filing of pleadings and other papers with the court as required by these rules must be with the court clerk, except that the judge may permit papers to be filed with him or her in which event the judge shall note the filing date on the papers and forthwith transmit them to the office of the court clerk.

### **Rule 2.113 Form of Pleadings and Other Papers**

- (A) [Unchanged.]
- (B) Preparation. Every pleading must be legibly typewritten or printed in ink, or, in the case of electronic pleadings, must be capable of being printed, in the English language.

(C)-(G) [Unchanged.]

#### **Rule 2.114 Signatures of Attorneys and Parties; Verification; Effect; Sanctions**

(A)-(B) [Unchanged.]

(C) Signature.

- (1) Requirement. Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document. Electronic documents must be signed by a digital signature as provided in MCR 2.703(B)(5).

(2) [Unchanged.]

(D)-(F) [Unchanged.]

#### **Rule 2.116 Summary Disposition**

(A)-(F) [Unchanged.]

(G) Affidavits; Hearing.

- (1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a)-(b) [Unchanged.]

- (c) Except for motions or responses filed under the provisions of subchapter 2.700, a ~~A~~ copy of a motion or response (including brief and any affidavits) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(2) [Unchanged.]

- (3) Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required

- (a) when the grounds asserted do not appear on the face of the pleadings, or the initial page of a pleading filed according to the provisions of subchapter 2.700, or

- (b) [Unchanged.]

(4)-(6) [Unchanged.]

(H)-(J) [Unchanged.]

### **Rule 2.119 Motion Practice**

(A) Form of Motions.

(1) [Unchanged.]

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. In hard copy or as electronically formatted, the motion or response must conform to the following requirements: Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(3)-(4) [Unchanged.]

(B)-(G) [Unchanged.]

### **Rule 2.205 Necessary Joinder of Parties**

(A) [Unchanged.]

(B) Effect of Failure to Join. When persons described in subrule (A) have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action, and may prescribe the time and order of pleading. If jurisdiction over those persons can be acquired only by their consent or voluntary appearance, the court may proceed with the action and grant appropriate relief to persons who are parties to prevent a failure of justice. In determining whether to proceed, the court shall consider

(1)-(3) [Unchanged.]

(4) whether the prejudice, if any, may be avoided or lessened by a protective order or a provision included in the final judgment;:

(5) in the case of actions in the Cyber Court or a cyber-qualified court, the capacity of the persons described in subrule (A) to participate fully in electronic practice.

Notwithstanding the failure to join a person who should have been joined, the court may render a judgment against the plaintiff whenever it is determined that the plaintiff is not entitled to relief as a matter of substantive law.

(C) [Unchanged.]

### **Rule 2.301 Completion of Discovery**

(A) In circuit court, Cyber Court or a cyber-qualified court, and probate court, the time for completion of discovery shall be set by an order entered under MCR 2.401(B)(2)(a).

(B)-(C) [Unchanged.]

### **Rule 2.302 General Rules Governing Discovery**

(A) [Unchanged.]

(B) Scope of Discovery.

(1)-(3) [Unchanged.]

(4) Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subrule (B)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a)-(c) [Unchanged.]

(d) In the case of requests for documents that are in paper or electronic form, the court shall consider the capacity of the parties to provide or receive the information in the form requested, the need of the requesting party for the information in the form requested, and the relative advantages and costs to the parties of providing the information sought in the form requested.

(e) A party may depose a witness that he or she expects to call as an expert at trial. The deposition may be taken at any time before trial on reasonable notice to the opposite party, and may be offered as evidence at trial as provided in MCR 2.308(A). The court need not adjourn the trial because of the unavailability of expert witnesses or their depositions.

(C)-(H) [Unchanged.]

### **Rule 2.306 Depositions on Oral Examination**

(A)-(E) [Unchanged.]

(F) Certification and Transcription; Filing; Copies.

(1)-(2) [Unchanged.]

(3) Except as provided in subrule (C)(3), ~~or in~~ MCR 2.315(E), or subchapter 2.700, a

deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall, after transcription and certification:

(a)-(b) [Unchanged.]

(G) [Unchanged.]

**Rule 2.310 Requests for Production of Documents and Other Things; Entry on Land for Inspection and Other Purposes**

(A)-(B) [Unchanged.]

(C) Request to Party.

(1)-(4) [Unchanged.]

(5) Except as otherwise directed by the court, a ~~A~~ party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(D) [Unchanged.]

**Rule 2.314 Discovery of Medical Information Concerning Party**

(A)-(C) [Unchanged.]

(D) Release of Medical Information by Custodian.

(1) [Unchanged.]

(2) In responding to a request for medical information under this rule, the custodian will be deemed to have complied with the request if the custodian

(a) makes the information reasonably available for inspection and copying; ~~or~~

(b) delivers to the requesting party the original information or a true and exact copy of the original information accompanied by a sworn certificate in the form approved by the state court administrator, signed by the custodian verifying that the copy is a true and complete reproduction of the original information; or

(c) delivers the information by electronic transmission to the Cyber Court or a cyber-qualified court.

(3)-(6) [Unchanged.]



(E) [Unchanged.]

### **Rule 2.315 Video Depositions**

(A)-(E) [Unchanged.]

(F) Use as Evidence; Objections.

(1)-(2) [Unchanged.]

(3) Except in the Cyber Court or a cyber-qualified court, a ~~A~~ party who seeks to use a video deposition at trial must provide the court with either

(a)-(b) [Unchanged.]

(4) [Unchanged.]

(G) [Unchanged.]

(H) Appeal. On appeal the recording remains part of the record and shall be transmitted with it. A party may request that the appellate court view portions of the video deposition. Except for appeals from the Cyber Court or a cyber-qualified court for which the appellate court does not require a transcript, if ~~If~~ a transcript was not provided to the court under subrule (F)(3), the appellant must arrange and pay for the preparation of a transcript to be included in the record on appeal.

(I) [Unchanged.]

### **Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders**

(A) [Unchanged.]

(B) Early Scheduling Conference and Order.

(1) Early Scheduling Conference. The court may direct that an early scheduling conference be held. In addition to those considerations enumerated in subrule (C)(1), during this conference the court should consider:

(a) whether jurisdiction and venue are proper or whether the case is frivolous, ~~and~~

(b) whether to refer the case to an alternative dispute resolution procedure under MCR 2.410, ~~and~~

(c) the complexity of a particular case and enter a scheduling order setting time limitations for the processing of the case and establishing dates when future actions should begin or be completed in the case, and

(d) the extent to which audio, video, and Internet teleconferencing should be used in the processing of the case.

(2) [Unchanged.]

(C)-(E) [Unchanged.]

(F) Presence of Parties at Conference. In the case of a conference at which meaningful discussion of settlement is anticipated, the court may direct that persons with authority to settle the case, including the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers:

(1) ~~be present at~~ attend the conference; or

(2) be immediately available at the time of the conference. The court's order may specify whether the availability is to be in person or by telephone.

This subrule does not apply to an early scheduling conference held pursuant to subrule (B).

(G)-(I) [Unchanged.]

#### **Rule 2.402 Use of Communication Equipment**

(A) Definition. "Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other contemporaneously. "Video conference equipment" is communication equipment that permits all those appearing or participating to hear and be heard, and to see at least the person or persons speaking.

(B)-(C) [Unchanged.]

#### **Rule 2.410 Alternative Dispute Resolution**

(A) [Unchanged.]

(B) ADR Plan.

(1) Each trial court that submits cases to ADR processes under this rule shall adopt an ADR plan by local administrative order. The plan must be in writing and available to the public in the ADR clerk's office. The ADR Plan of the Cyber Court or a cyber-qualified court must be posted on the court's website.

(2)-(4) [Unchanged.]

(C) [Unchanged.]

(D) Attendance at ADR Proceedings.

(1) [Unchanged.]

(2) Presence of Parties. The court may direct that persons with authority to settle a case, including the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers:

(a) ~~be present at~~ attend the ADR proceeding;

(b) [Unchanged.]

The court's order may specify whether the availability is to be in person, ~~or~~ by telephone, or by other electronic communication medium.

(3) [Unchanged.]

(E)-(F) [Unchanged.]

**Rule 2.506 Subpoena; Order to Attend**

(A) Attendance of Party or Witness.

(1) [Unchanged.]

(2) The court may require a party and a representative of an insurance carrier for a party with authority to settle to ~~be present~~ attend or be immediately available at trial.

(3) [Unchanged.]

(B) Authorized Signatures.

(1) [Unchanged.]

(2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, ~~or~~ lithographed, or digitalized.

(C) Notice to Witness of Required Attendance.

(1)-(2) [Unchanged.]

(3) If the served witness notifies the party that it is impossible for the witness to ~~be present~~ in attend court as directed, the party must either excuse the witness from attendance at that time or notify the witness that a special hearing may be held to adjudicate the issue.

(D)-(H) [Unchanged.]

(I) Subpoena for Production of Hospital Medical Records.

(1) [Unchanged.]

(a) The hospital may deliver or mail to the clerk of the court in which the action is pending, without cost to the parties, a complete and accurate copy of the original record. In the Cyber Court or a cyber-qualified court, the hospital may deliver the records by electronic transmission.

(b) [Unchanged.]

(c) Except for records transmitted electronically, ~~T~~the envelope or other container in which the record is delivered to the court shall be clearly marked to identify its contents. If the hospital wishes the record returned when it is no longer needed in the action, that fact must be stated on the container, and, with the record, the hospital must provide the clerk with a self-addressed, stamped envelope that the clerk may use to return the record.

(d) [Unchanged.]

(2) Except for records transmitted electronically, ~~T~~the clerk shall keep the copies sealed in the container in which they were supplied by the hospital. The container shall be clearly marked to identify the contents, the name of the patient, and the title and number of the action. The container shall not be opened except at the direction of the court. In the case of records transmitted electronically, the court shall direct that the transmitted records not be opened except at the direction of the court.

(3)-(5) [Unchanged.]

**Rule 2.603 Default and Default Judgment**

(A) [Unchanged.]

(B) Default Judgment.

(1) Notice of Request for Judgment.

(a)-(b) [Unchanged.]

(c) If the defaulted party has appeared, the notice may be given in the manner provided by MCR 2.107. If the defaulted party has not appeared, the notice may be served by personal service, by ordinary first-class mail at the defaulted party's last known address or the place of service, or as otherwise directed by the court. For actions in the Cyber Court or a cyber-qualified court, the notice may be served by electronic

transmission.

(d) [Unchanged.]

(2)-(3) [Unchanged.]

(4) Notice of Entry of Judgment. The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given. In an action in the Cyber Court or a cyber-qualified court, the notice may be transmitted electronically.

(C)-(E) [Unchanged.]

### **Rule 3.501 Class Actions**

(A)-(B) [Unchanged.]

(C) Notice to Class Members.

(1)-(3) [Unchanged.]

(4) Manner of Giving Notice.

(a) [Unchanged.]

(b) The court may require individual written notice to all members who can be identified with reasonable effort. In lieu of or in addition to individual notice, the court may require notice to be given through another method reasonably calculated to reach the members of the class. Such methods may include using publication in a newspaper or magazine; website posting; broadcasting on television or radio; posting; or distribution through a trade or professional association, union, or public interest group.

(c) [Unchanged.]

(5)-(7) [Unchanged.]

(D)-(I) [Unchanged.]

### **Rule 3.611 Voluntary Dissolution of Corporations**

(A)-(B) [Unchanged.]

(C) Notice of Action. Process may be served as in other actions, or, on the filing of the complaint, the court may order all persons interested in the corporation to show cause why

the corporation should not be dissolved, at a time and place to be specified in the order, but at least 28 days after the date of the order. Notice of the contents of the order must be served by mail or electronic notice in accordance with MCR 2.709 on all creditors and stockholders at least 28 days before the hearing date, and must be published once each week for 3 successive weeks in a newspaper designated by the court.

(D)-(E) [Unchanged.]

### **Rule 8.105 General Duties of Clerks**

(A) Office Hours. The office of the clerk of every court of record must be open, and the clerk or deputy clerk must be in attendance, during business hours on all days except Saturdays, Sundays, and legal holidays, and at other times that the court is in session. The office of the clerk of the Cyber Court or a cyber-qualified court shall be open for the purpose of receiving filings at all times, and shall maintain flexible hours of operation that will allow the court to operate effectively across all time zones, as needed.

(B) [Unchanged.]

(C) Notice of Judgments, Orders, and Opinions. Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk to the attorneys of record in the case, in the manner provided in subchapter 2.700 or MCR 2.107.

(D) [Unchanged.]

### **Rule 8.109 Mechanical Recording of Court Proceedings**

(A)-(B) [Unchanged.]

(C) Cyber Court and Cyber-Qualified Courts. Proceedings of the Cyber Court and cyber-qualified courts must be recorded by audio/video recording device and, when feasible, webcast on the Internet.

### **Rule 8.110 Chief Judge Rule**

(A) [Unchanged.]

(B) Chief Judge, Chief Judge Pro Tempore, and Presiding Judges of Divisions.

(1)-(2) [Unchanged.]

(3) The chief judge, chief judge pro tempore, and any presiding judges of a trial court other than the Cyber Court shall serve a two-year term beginning on January 1 of each even-

numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief judge pro tempore and any presiding judges serve at the pleasure of the chief judge. The chief judge of the Cyber Court shall serve a three-year term.

(4) [Unchanged.]

(C) [Unchanged.]

(D) Court Hours; Court Holidays; Judicial Absences.

(1)-(3) [Unchanged.]

(4) Judicial Education Leave Standard. A judge is expected to take judicial education leave of 2 weeks every 3 years to participate in continuing legal education and training at Michigan judicial training programs and nationally recognized judicial education programs, including graduate and refresher courses. Judicial education leave does not include judicial conferences for which attendance is required. The use of judicial education leave approved by the chief judge does not affect a judge's annual leave. A judge assigned to the Cyber Court shall take judicial education leave to attend technological training provided by the Michigan Judicial Institute at least two weeks in the first year of appointment, and at least one week in each subsequent year.

(5)-(6) [Unchanged.]

#### **Rule 8.112 Local Court Rules; Administrative Orders**

(A) Local Court Rules.

(1) [Unchanged.]

(2) If a practice of a trial court other than the Cyber Court or a cyber-qualified court is not specifically authorized by these rules, and

(a) reasonably depends on attorneys or litigants being informed of the practice for its effectiveness, or

(b) requires an attorney or litigant to do some act in relation to practice before that court, the practice, before enforcement, must be adopted by the court as a local court rule and approved by the Supreme Court. Changes in practice in the Cyber Court or a cyber-qualified court not in conflict with subchapter 2.700 may be made by e-mail announcement to authorized electronic filers of the court and posting on the court's website.

(3)-(4) [Unchanged.]

(B) [Unchanged.]

### **Rule 8.115 Courtroom Decorum**

- (A) Display of Flags. The flags of the United States and of the State of Michigan must be displayed in a conspicuous place adjacent to the bench at all times and be visible at some point during the transmission of an Internet broadcast of the Cyber Court when court is in session.
- (B) [Unchanged.]

### **Rule 8.119 Court Records and Reports; Duties of Clerks**

- (A)-(B) [Unchanged.]
- (C) Filing of Papers. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Papers filed with the clerk of the court must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may reject papers which do not conform to MCR 2.113(C)(1) and MCR 5.113(A)(1). In the Cyber Court and in cyber-qualified courts, in lieu of a first page endorsement, the date and time that documents are filed in the Cyber Court and in cyber-qualified courts must be electronically recorded, and a return e-mail confirming the date and time of filing must be sent to the authorized electronic filer.
- (D) Records Kept by the Clerk. The clerk of the court of every trial court shall keep records in the form and style the court prescribes and in accordance with Michigan Supreme Court records standards and local court plans. A court may adopt a computerized, microfilm, or word-processing system for maintaining records that substantially complies with this subrule.
  - (1) Indexes and Case Files. The clerk shall keep and maintain records of each case consisting of a numerical index, an alphabetical index, a register of actions, and a case file in such form and style as may be prescribed by the Supreme Court. Each case shall be assigned a case number on receipt of a complaint, petition, or other initiating document. The case number shall comply with MCR 2.113(C)(1)(c) or MCR 5.113(A)(1)(b)(ii) as applicable. In addition to the case number, a separate petition number shall be assigned to each petition filed under the Juvenile Code as required under MCR 5.113(A)(1)(b)(ii). The case number (and petition number if applicable) shall be recorded on the register of actions, file folder, numerical index, and alphabetical index. The records shall include the following characteristics:
    - (a)-(c) [Unchanged.]
    - (d) Case File. The clerk of the court shall maintain a file folder for each action, bearing the case number assigned to it, in which the clerk shall keep all pleadings, process, written opinions and findings, orders, and judgments filed in the action. In the Cyber Court or a cyber-qualified court, the file folder may be an electronic file folder. Additionally, the clerk shall keep in the file all other documents prescribed



by court rule, statute, or as ordered by the court. If other records of a case file are maintained separately from the file folder, the clerk shall keep them as prescribed by case file management standards.

(2)-(4) [Unchanged.]

(E) Access to Records. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

(1) Unless access to a file, a document, or information contained in a file or document is restricted by statute, court rule, or an order entered pursuant to subrule (F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (E)(2) and (E)(3). The clerk of the Cyber Court and the clerk of a cyber-qualified court shall make electronic documents that are not restricted accessible through the Internet.

(2) If a person wishes to obtain copies of ~~papers in paper form~~ in a file, the clerk shall provide copies upon receipt of the reasonable cost of search and reproduction. If the clerk prefers, the requesting person may be permitted to make copies at personal expense under the direct supervision of the clerk. Except for copies of transcripts or as otherwise directed by statute or court rule, a standard fee may be established for providing copies of documents in paper form ~~papers~~ in a file.

(3)-(4) [Unchanged.]

(F)-(G) [Unchanged.]

[The following provisions of the Michigan Rules of Evidence  
would be amended as indicated below.]

#### **Rule 106 Remainder of or Related Writings or Recorded Statements**

When a ~~writing or recorded statement~~ record or part ~~thereof~~ of a record is introduced by a party, an adverse party may require the introduction at that time of any other part or any ~~other writing or recorded statement which~~ record that ought in fairness to be considered contemporaneously with it.

#### **Rule 107 Definitions**

The following definitions apply to the Michigan Rules of Evidence:

- (a) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.
- (b) "Public record" means a record of a public office or agency in which the record is prepared,

filed, or recorded pursuant to law.

- (c) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

#### **Rule 604 Interpreters**

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation and complete rendition of all communications made during the interpretive process to the best of the interpreter’s knowledge and belief.

#### **Rule 612 Writing or Object Used To Refresh Memory**

- (a) *While testifying.* If, while testifying, a witness uses a writing record or object to refresh memory, an adverse party is entitled to have the writing record or object produced at the trial, hearing, or deposition in which the witness is testifying.
- (b) *Before testifying.* If, before testifying, a witness uses a writing record or object to refresh memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing record or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.
- (c) *Terms and conditions of production and use.* A party entitled to have a writing record or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence, for their bearing on credibility only unless otherwise admissible under these rules for another purpose, those portions which relate to the testimony of the witness. If the trial, deposition, or hearing is being conducted in more than one location simultaneously in the Cyber Court or a cyber-qualified court, or if production of the writing record or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing record or object contains matters not related to the subject matter of the testimony the court shall examine the writing record or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing record or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

#### **Rule 801 Hearsay; Definitions**

The following definitions apply under this article:

- (a) *Statement.* A "statement" is ~~(1) an oral or written assertion, an assertion in a record, or (2)~~ nonverbal conduct of a person, ~~if it is intended by the person who intends it~~ as an assertion.

(b)-(d) [Unchanged.]

### **Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1)-(4) [Unchanged.]

- (5) *Recorded recollection.* A ~~memorandum or~~ record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the ~~memorandum or~~ record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
- (6) *Records of regularly conducted activity.* A ~~memorandum, report, record, or data compilation, in any form,~~ of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the ~~memorandum, report, record, or data compilation,~~ all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with subrule 902(11) or (12), a rule promulgated by the supreme court or with a statute permitting providing for certification, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. A public record inadmissible under paragraph (8) is inadmissible under this exception.
- (7) *Absence of entry in records kept in accordance with the provisions of paragraph (6).* Evidence that a matter is not included in the ~~memoranda, reports, records, or data compilations, in any form,~~ kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a ~~memorandum, report, record, or data compilation~~ was regularly made and preserved, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with subrule 902(11) or (12), or with a statute providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness.
- (8) *Public records and reports of public office.* Unless the sources of information or other circumstances indicate lack of trustworthiness, a record ~~Records, reports, statements, or data compilations, in any form,~~ of a public offices or agencies, setting forth its regularly conducted and regularly recorded activities, ~~(A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law,~~ excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, and subject to the limitations of MCL 257.624.

- (9) *Records of vital statistics.* Records ~~or data compilations, in any form,~~ of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
- (10) *Absence of public record or entry.* To prove the absence of a record, ~~report, statement, or data compilation, in any form,~~ or the nonoccurrence or nonexistence of a matter of which a record, ~~report, statement, or data compilation, in any form,~~ was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, ~~report, statement, or data compilation, or entry.~~
- (11) [Unchanged.]
- (12) *Marriage, baptismal, and similar certified records ~~certificates~~.* Statements of fact contained in a certified record ~~certificate~~ that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.
- (13) [Unchanged.]
- (14) *Records of documents affecting an interest in property.* ~~A~~ The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed and delivered, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.
- (15) *Statements in documents affecting an interest in property.* A statement contained in a record ~~document~~ purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the record ~~document~~, unless dealings with the property since the record ~~document~~ was made have been inconsistent with the truth of the statement or the purport of the record ~~document~~.
- (16) *Statements in ancient records ~~documents~~.* Statements in a record ~~document~~ in existence twenty years or more the authenticity of which is established.
- (17) *Market reports, commercial publications.* Market quotations, tabulations, lists, directories, or other published or publicly recorded compilations, generally used and relied upon by the public or by persons in particular occupations.
- (18)-(24) [Unchanged.]

**Rule 804 Hearsay Exceptions; Declarant Unavailable**

- (a) *Definition of unavailability.* "Unavailability as a witness" includes situations in which the declarant-

(1)-(4) [Unchanged.]

- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means, and in a criminal case, due diligence is shown.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying. A declarant is not unavailable as a witness if the declarant testifies at a location of the Cyber Court or a cyber-qualified court designated as a virtual courtroom for the purpose of the proceedings in which the declarant's testimony is sought.

(b) [Unchanged.]

#### **Rule 901 Requirement of Authentication or Identification**

(a) [Unchanged.]

- (b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1)-(6) [Unchanged.]

- (7) *Public records or reports.* Evidence that a writing record authorized by law to be recorded or filed and in fact recorded or filed in a public office, ~~or a purported public record, report, statement, or data compilation, in any form,~~ is from the public office where items of this nature are kept.

- (8) *Ancient records ~~documents or data compilation.~~* Evidence that a record ~~document or data compilation, in any form,~~ (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9)-(11) [Unchanged.]

#### **Rule 902 Self-Authentication**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1)-(4) [Unchanged.]

- (5) *Official publications.* Books, pamphlets, or other ~~publications purporting to be issued by public authority~~ publicly issued record issued by public authority, if in a form indicative of the genuineness of such a record.
- (6)-(7) [Unchanged.]
- (8) *Acknowledged ~~documents~~ records.* ~~Documents~~ Records accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.
- (9) *Commercial paper and related ~~documents~~ records.* Commercial paper, signatures thereon, and ~~documents~~ records relating thereto to the extent provided by general commercial law.
- (10) [Unchanged.]
- (11) *Certified domestic records of regularly conducted business activity.* The original or a duplicate of a domestic record, ~~whether domestic or foreign,~~ of regularly conducted business activity, ~~that would be admissible under~~ within the scope of rule 803(6), if accompanied by a written declaration under oath by its custodian or other qualified person certifying that:
- (A) the document is accompanied by a written declaration under oath of the custodian of the record or other qualified individual that the ~~The~~ record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person ~~having~~ with ~~knowledge of those matters;~~ ~~(B) The record was kept in the course of the regularly conducted business activity; and was made pursuant to the regularly conducted activity; and (C) It was the regular practice of the business activity to make the record.~~
  - (B) the ~~A~~ party intending to offer the record in evidence under this paragraph must provide written ~~gives~~ notice of that intention to all adverse parties; and must makes the record and declaration available for inspection sufficiently in advance of their ~~its~~ offer into evidence to provide an ~~the~~ adverse party with a fair opportunity to challenge them ~~the~~ record; and
  - (C) notice is not given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.
- (12) *Certified foreign record of regularly conducted business activity.* The original or a duplicate of a record from a foreign country of acts, events, conditions, opinions, or diagnoses if:
- (A) the document is accompanied by a written declaration under oath of the custodian of the record or other qualified individual that the record was made, at or near the time of the occurrence of the matters set froth, by or from information transmitted by a person

having knowledge of those matters, was kept in the course of a regularly conducted business activity, and was made pursuant to the regularly conducted activity;

(B) the party intending to offer the record into evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record; and

(C) notice is not given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

### **Rule 903 Subscribing Witness' Testimony Unnecessary**

The testimony of a subscribing witness is not necessary to authenticate a writing record unless required by the laws of the jurisdiction whose laws govern the validity of the writing record.

### **Rule 1001 Contents of Writings, Recordings, and Photographs; Definitions**

For purposes of this article the following definitions are applicable:

(1) Image. "Image" means a form of a record that consists of a digitized copy or image of information.

(2) Writings and recordings. "Writings" and "recordings" ~~consist of~~ mean letters, words, sounds, or numbers, or their equivalent, inscribed on a tangible medium or stored in an electronic or other machine and retrievable in perceivable form ~~set down~~ by handwriting, typewriting, printing, photostating, photographing, ~~magnetic impulse~~, mechanical or electronic recording, or other ~~form of data compilation~~ technique.

(2) ~~Photographs~~. "Photographs" ~~include still photographs, x-ray films, video tapes, and motion pictures.~~

(3) Original. An "original" of a writing or recording is the writing or recording itself or other record itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. ~~If data are stored in a computer or similar device, any~~ The term includes a printout or other perceivable output of a record of data or images stored in a computer or similar device, if readable by sight, shown to reflect the data or images accurately, is an "original".

(4) Duplicate. A "duplicate" is a counterpart in the form of a record produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques, which accurately reproduces the original.

(5) Photograph. "Photograph" means a form of a record that consists of a still photograph, stored image, x-ray film, video tape, or motion picture.

**Rule 1002 Requirement of Original**

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph or other record is required, except as otherwise provided in these rules or by statute.

**Rule 1003 Admissibility of Duplicates**

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

**Rule 1004 Admissibility of Other Evidence of Contents**

The original is not required, and other evidence of the contents of a record ~~writing, recording, or photograph~~ is admissible if)

- (1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
- (2) *Original not obtainable.* No original can be obtained by any available judicial process or procedure; or
- (3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or
- (4) *Collateral matters.* The record ~~writing, recording, or photograph~~ is not closely related to a controlling issue.

**Rule 1005 Public Records**

The contents of an official record, or of a private record ~~document~~ authorized to be recorded or filed and actually recorded or filed, ~~including data compilations in any form~~, if otherwise admissible, may be proved by copy in perceivable form, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

**Rule 1006 Summaries**

The contents of voluminous records ~~writings, recordings, or photographs~~ which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation, or other perceivable presentation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

**Rule 1007 Testimony or Written Admission of a Party**

Contents of records ~~writings, recordings, or photographs~~ may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.



### **Rule 1008 Functions of Court and Jury**

When the admissibility of other evidence of contents of records ~~writings, recordings, or photographs~~ under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (a) whether the asserted ~~writing record~~ ever existed, or (b) whether another record ~~writing, recording, or photograph~~ produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Staff Comment: The proposed addition of subchapter 2.700 of the Michigan Court Rules, and the proposed changes in various other provisions of the MCRs and various provisions of the Michigan Rules of Evidence have been proposed by the State Bar of Michigan in light of 2001 PA 262; MCL 600.8001 *et seq.*, which establishes a Cyber Court in Michigan effective October 1, 2002. The proposals were drafted by a work group convened by the State Bar.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court clerk in writing or electronically by July 1, 2002. P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@jud.state.mi.us. When filing a comment, please refer to file **2002-04**.